

evidence of the Crown witnesses that tended to rebut the charge or to afford a defence.

The only defence indicated is in the impugned statements. As these are in evidence they can be considered for what they are worth.

The first appellant is the owner of the sampan. He said that the third accused (who has not appealed) hired him to go to Kerimon Island and for this work promised him \$30. He said that he did not know the nature of the work until he arrived at Kerimon. The learned District Judge considered this suggestion and rejected it.

I am not surprised. On his own statement the first appellant did not ascertain the purpose of this trip for which he was to be paid \$30. I have no doubt he knew the length of time for which his sampan would be required. It was for less than a day and \$30 seems a high price for so short a charter. His conduct in allowing chandu to be taken on board and throwing it overboard when the revenue officers came up lends no support to original innocence. The District Judge was entitled to disbelieve the first appellant's professions of ignorance.

In his statement the second appellant said he was employed by the first appellant at \$18 per month to drive the motor sampan. This is probably correct as it is confirmed by the statement of the first appellant and as this man was seen by Mr. Capel at the stern driving the motor. He said he was told by the first appellant who was accompanied by the third man to proceed to an island. Later he saw the Hai Heng and signals from the third man in the sampan and packages lifted from the sea.

This statement indicates that the second appellant did not know what he left Singapore for but the District Judge rejected the suggestion.

This man was a servant and as such might not have known the purpose of the orders he was given by the first appellant. There is nothing in the evidence to indicate that this man handled any of the chandu or took part in throwing it over board or otherwise behaved in a suspicious manner.

I think there is just sufficient doubt as to whether this servant had sufficient knowledge of the plans and devices of his employer to constitute him guilty of doing anything at Singapore which he knew to be preparatory to the importation of chandu.

As I think the offence charged is sufficiently proved against the first appellant, it is unnecessary to

consider whether, if the evidence had indicated a design to land the chandu in Johore, the setting out from Singapore for this purpose would not constitute an attempt to facilitate smuggling into Johore contrary to section 108 B (2) of the Penal Code. No argument was addressed to me on this point so I express no opinion upon it.

I allow the appeal of the second appellant Aw Tong and set aside his conviction.

I dismiss the appeal of the first appellant and must say that had the sentence been one of three years instead of eleven months I would not have reduced it.

The sampan presumably has been seized but there has been no order of forfeiture under section 33.

Apparently the Revenue Authorities have doubts as to whether an act done with a sampan in Singapore preparatory to importing chandu is an offence to which section 33 applies, and as the point was not raised on the appeal I leave it open.

Appeal of 1st appellant dismissed.

Appeal of 2nd appellant allowed.

[ORIGINAL CIVIL SUBDIVISION]

WORLEY, J.

IN THE MATTER OF THE ARBITRATION
ORDINANCE (CHAPTER 12)

and

IN THE MATTER OF AN ARBITRATION
BETWEEN TAN CHU ING AND OTHERS.

(SINGAPORE ORIGINATING MOTION No. 17 of 1928)

*Rules of the Supreme Court, Order 61 Rule 6—
of the expression "monthly sittings."*

By Order 61 Rule 6 of the Rules of the Supreme Court it is provided that an application to set aside an award may be made at any time before the last day of the monthly sittings next after such award has been made and published to the parties. In this case an award was made and published to the parties on the 29th October 1938 and on the 30th November 1938 an application was made by way of Originating Motion to set aside the award. The Motion was served on the respondents on the same day. By Section 43 (1) (a) of the Courts Ordinance it is provided that sittings for the trial of actions shall be held monthly throughout the year commencing on the first Tuesday in each month.

Held, that such monthly sittings continue until the first Tuesday in the next month even though this often means that e.g. the January monthly sittings carry on into the month of February and that there is no interregnum between such monthly sittings.

ADJOURNED SUMMONS.

Laycock for all the Applicants.
Koek for two Respondents.
Coltart for two Respondents.

On the 29th October 1938 the Arbitrator signed his award and on the same day he gave notice thereof to the parties to the Arbitration. On the 30th November 1938 the applicants who were parties to the Arbitration filed an Originating Motion praying for an Order that the award be set aside or alternatively that the matters referred to the Arbitrator by the submission should be remitted to the consideration of the arbitrator on the grounds set out in the Motion Paper. The 30th November 1938 was Wednesday. The first Tuesday in December 1938 was the 6th December 1938. The Applicants filed at once an application by way of Summons in Chambers asking for extension of time for filing of the motion to set aside the award. The application was adjourned into open Court and came on together with the motion in open Court on the 2nd June 1939. In fact the 2nd of June 1939 was a Friday and the June sittings commenced on Tuesday the 6th June.

John Laycock for the applicants submitted that no extension was necessary. The application had been made *ex abundanti cautela* but he submitted that the matter was covered by Section 42 (1) (a) of the Courts Ordinance. Under that Section the monthly sittings after Court commenced on the first Tuesday in each month and he submitted that each monthly sittings carried on until the beginning of the next monthly sittings thereafter. In the present case the result was that the November 1938 sittings continued until the commencement of the December sittings on the 6th December 1938. Rule 6 Order 61 of the Rules of the Supreme Court provides that an application to set aside an award may be made at any time before the last day of the monthly sittings next after such award has been made and published to the parties. In this case if the last day of the November monthly sittings was the 5th December, the application could have been made without leave at any time up to the 4th December 1938. Having been filed on the 30th November it was not out of time.

E. R. Koek in reply submitted that (a) under the Interpretation Ordinance "month" means calendar month, so monthly sittings of any particular month

must mean sessions of the Court in that month only; (b) to hold that monthly sittings of a particular month extend to sessions in the succeeding month would be doing violence to the English language; (c) there can be no objection to the Court sitting during the period between the end of one sittings (i.e. the end of the calendar month) and the commencement of the next (i.e. the first Tuesday of the succeeding month) as there is nothing declaring the days during such interregnum as *dies non*.

As the November sittings ended on the 30th November the application to set aside the Award was out of time and should be dismissed.

Coltart adopted the same argument as *E. R. Koek*.

Laycock in reply:—The hearing of this application has actually taken place in open Court on the 2nd June whereas the June monthly sittings do not commence until the 6th June. The date of hearing of this application was fixed in the ordinary way at the usual fixing of the list for the monthly sittings and as part of the list for the May sittings. It could not be in the June sittings because they did not commence until the 6th June. If it was not in the May sittings the conclusion would be that the Court could not be properly be sitting at all on that day which he submitted was absurd. He also pointed out that it was a matter of common practice that when the monthly list was fixed for e.g. the May sittings no interregnum was ever allowed but it was well known that the sittings of the Court proceeded without interruption from one monthly sittings to another.

Worley, J.—In an oral Judgment held that the monthly sittings of the Court proceeded without interruption from one month to another and that as the December sittings of 1938 by Statute did not commence until the 6th December the November sittings continued up to and included the 5th December notwithstanding that they ran into the month of December and accordingly held that no application for extension of time was necessary in the circumstances.

Order accordingly.